



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,320	03/26/2001	Barry Lynn Royer	2001P04781US	8856

7590

11/23/2005

Siemens Corporation
Intellectual Property Department
186 Wood Avenue South
Iselin, NJ 08830

EXAMINER

ART UNIT	PAPER NUMBER
----------	--------------

DATE MAILED: 11/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 09/817,320	Applicant(s) ROYER ET AL.	
	Examiner Zachary A. Davis	Art Unit 2137	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 12 October 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

Continuation of 10. Other (including any explanation in support of the above items):

Regarding item 1 above, the present Appeal Brief incorrectly states that there are no related appeals regarding the present application. There is currently a pending appeal in related application serial number 09/817,323. That application and the present application claim priority to the same provisional application, and the specifications of the two applications are substantially similar. Further, the Levergood reference, US Patent 5708780, is of record in both applications and there are outstanding arguments in both applications regarding the Levergood reference. Applicant is required to identify all prior and PENDING APPEALS and other proceedings which MAY BE RELATED TO, directly affect or be directly affected by or have a bearing on the Board's decision in the present appeal. See 37 CFR 41.37(c)(1)(ii). For the above reasons, application 09/817,323 is considered, at minimum, to be related to the present appeal, and therefore must be identified as a related appeal.

The Examiner further notes that Appendix IV of the present Appeal Brief, the Table of Cases, does not list all cases cited in the Brief (see pages 21-22 of the Brief, under the heading of Rejections under 35 U.S.C. 103(a), before the subheading regarding Claim 4; specifically, *In re Fine*; *Graham v. John Deere Co.*; *Uniroyal, Inc. v. Rudkin-Wiley Corp.*; *Ashland Oil Inc. v. Delta Resins & Refractories, Inc.*; *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*; and *In re Oetiker* have been cited in the brief but are not listed in the appendix).

Matthew Smithers
MATTHEW SMITHERS
PRIMARY EXAMINER
Art Unit 2137